

The Honorable Barbara J. Rothstein

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

MICHAEL PFINGSTEN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

CONVOY, INC., a Washington Corporation,

Defendants.

No. 2:23-cv-01629-BJR

**DEFENDANT CONVOY INC.'S
ANSWER AND AFFIRMATIVE
DEFENSES**

COMES NOW CONVOY, INC. ("Convoy" or "Defendant") and files this its responsive
pleading to the Complaint identified above as follows:

1. Insofar as it characterizes the action and calls for a legal conclusion, no response
is necessary. At this time, the Defendant states that its assets were foreclosed via Article IX of
the Uniform Commercial Code and it effectively stopped functioning. Its long-time management
was terminated. The Defendant now has little, if any assets, and conducts no business. The
Defendant is now in the control of a third-party restructuring officer. Because of these
circumstances, the Defendant cannot confirm or deny the allegations regarding the Plaintiff's
employment or tenure and therefore denies the same. To the extent any further response is
necessary, these allegations are denied.

1 2. Because these allegations call for a legal conclusion, no response is necessary.
2 To the extent any response is necessary, these allegations are denied.

3 3. Because these allegations call for a legal conclusion, no response is necessary.
4 To the extent any response is necessary, these allegations are denied.

5 4. Because these allegations call for a legal conclusion, no response is necessary.
6 To the extent any response is necessary, these allegations are denied.

7 5. Because these allegations call for a legal conclusion, no response is necessary.
8 To the extent any response is necessary, these allegations are denied.

9 6. Because these allegations call for a legal conclusion, no response is necessary.
10 To the extent any response is necessary, these allegations are denied.

11 7. Because these allegations call for a legal conclusion, no response is necessary.
12 To the extent any response is necessary, these allegations are denied.

13 8. Because these allegations call for a legal conclusion, no response is necessary.
14 To the extent any response is necessary, these allegations are denied.

15 9. At this time, the Defendant states that its assets were foreclosed via Article IX of
16 the Uniform Commercial Code and it effectively stopped functioning. Its long-time management
17 was terminated. The Defendant now has little, if any assets, and conducts no business. The
18 Defendant is now in the control of a third-party restructuring officer. Because of these
19 circumstances, the Defendant cannot confirm or deny the allegations regarding the Plaintiff's
20 employment or tenure and therefore denies the same. To the extent any further response is
21 necessary, these allegations are denied.

22 10. Denied.
23
24
25
26

1 11. Because these allegations call for a legal conclusion, no response is necessary.
2 To the extent any response is necessary, these allegations are denied.

3 12. Because these allegations call for a legal conclusion, no response is necessary.
4 To the extent any response is necessary, these allegations are denied.

5 13. Because these allegations call for a legal conclusion, no response is necessary.
6 To the extent any response is necessary, these allegations are denied.

7 14. Because these allegations call for a legal conclusion, no response is necessary.
8 To the extent any response is necessary, these allegations are denied.

9 15. Because these allegations call for a legal conclusion, no response is necessary.
10 To the extent any response is necessary, these allegations are denied.

11 16. Because these allegations call for a legal conclusion, no response is necessary.
12 To the extent any response is necessary, these allegations are denied.

13 17. Because these allegations call for a legal conclusion, no response is necessary.
14 To the extent any response is necessary, these allegations are denied.

15 18. Because these allegations call for a legal conclusion, no response is necessary.
16 To the extent any response is necessary, these allegations are denied.

17 19. Because these allegations call for a legal conclusion, no response is necessary.
18 To the extent any response is necessary, these allegations are denied.

19 20. At this time, the Defendant states that its assets were foreclosed via Article IX of
20 the Uniform Commercial Code and it effectively stopped functioning. Its long-time management
21 was terminated. The Defendant now has little, if any assets, and conducts no business. The
22 Defendant is now in the control of a third-party restructuring officer. Because of these
23 circumstances, the Defendant cannot confirm or deny the allegations regarding the Plaintiff's
24 25
26

1 employment or tenure and therefore denies the same. To the extent any further response is
2 necessary, these allegations are denied.

3 21. At this time, the Defendant states that its assets were foreclosed via Article IX of
4 the Uniform Commercial Code and it effectively stopped functioning. Its long-time management
5 was terminated. The Defendant now has little, if any assets, and conducts no business. The
6 Defendant is now in the control of a third-party restructuring officer. Because of these
7 circumstances, the Defendant cannot confirm or deny the allegations regarding the Plaintiff's
8 employment or tenure and therefore denies the same. To the extent any further response is
9 necessary, these allegations are denied.
10

11 22. At this time, the Defendant states that its assets were foreclosed via Article IX of
12 the Uniform Commercial Code and it effectively stopped functioning. Its long-time management
13 was terminated. The Defendant now has little, if any assets, and conducts no business. The
14 Defendant is now in the control of a third-party restructuring officer. Because of these
15 circumstances, the Defendant cannot confirm or deny the allegations regarding the Plaintiff's
16 employment or tenure and therefore denies the same. To the extent any further response is
17 necessary, these allegations are denied.
18

19 23. Because these allegations call for a legal conclusion, no response is necessary.
20 To the extent any response is necessary, these allegations are denied.

21 24. Because these allegations call for a legal conclusion, no response is necessary.
22 To the extent any response is necessary, these allegations are denied.

23 25. Because these allegations call for a legal conclusion, no response is necessary.
24 To the extent any response is necessary, these allegations are denied.
25
26

1 26. Because these allegations call for a legal conclusion, no response is necessary.
2 To the extent any response is necessary, these allegations are denied.

3 27. Because these allegations call for a legal conclusion, no response is necessary.
4 To the extent any response is necessary, these allegations are denied.

5 28. Because these allegations call for a legal conclusion, no response is necessary.
6 To the extent any response is necessary, these allegations are denied.

7 29. Because these allegations call for a legal conclusion, no response is necessary.
8 To the extent any response is necessary, these allegations are denied.
9

10 30. Because these allegations call for a legal conclusion, no response is necessary.
11 To the extent any response is necessary, these allegations are denied.

12 31. No response is necessary, but to the extent that that such a response is required,
13 the allegation is denied and all prior allegations are incorporated by reference.

14 32. At this time, the Defendant states that its assets were foreclosed via Article IX of
15 the Uniform Commercial Code and it effectively stopped functioning. Its long-time management
16 was terminated. The Defendant now has little, if any assets, and conducts no business. The
17 Defendant is now in the control of a third-party restructuring officer. Because of these
18 circumstances, the Defendant cannot confirm or deny the allegations regarding the Plaintiff's
19 employment or tenure and therefore denies the same. To the extent any further response is
20 necessary, these allegations are denied.
21

22 33. Because these allegations call for a legal conclusion, no response is necessary.
23 To the extent any response is necessary, these allegations are denied.

24 34. Because these allegations call for a legal conclusion, no response is necessary.
25 To the extent any response is necessary, these allegations are denied.
26

1 35. Because these allegations call for a legal conclusion, no response is necessary.
2 To the extent any response is necessary, these allegations are denied.

3 36. Because these allegations call for a legal conclusion, no response is necessary.
4 To the extent any response is necessary, these allegations are denied.

5 37. Because these allegations call for a legal conclusion, no response is necessary.
6 To the extent any response is necessary, these allegations are denied.

7 38. Because these allegations call for a legal conclusion, no response is necessary.
8 To the extent any response is necessary, these allegations are denied.

9 39. Because these allegations call for a legal conclusion, no response is necessary.
10 To the extent any response is necessary, these allegations are denied.

11 40. Because these allegations call for a legal conclusion, no response is necessary.
12 To the extent any response is necessary, these allegations are denied.

13 41. Because these allegations call for a legal conclusion, no response is necessary.
14 To the extent any response is necessary, these allegations are denied.

15 42. Because these allegations call for a legal conclusion, no response is necessary.
16 To the extent any response is necessary, these allegations are denied.

17 43. No response is necessary, but to the extent that that such a response is required,
18 the allegation is denied and all prior allegations are incorporated by reference.

19 44. Because these allegations call for a legal conclusion, no response is necessary.
20 To the extent any response is necessary, these allegations are denied.

21 45. At this time, the Defendant states that its assets were foreclosed via Article IX of
22 the Uniform Commercial Code and it effectively stopped functioning. Its long-time management
23 was terminated. The Defendant now has little, if any assets, and conducts no business. The
24
25
26

1 Defendant is now in the control of a third-party restructuring officer. Because of these
2 circumstances, the Defendant cannot confirm or deny the allegations regarding the Plaintiff's
3 employment or tenure and therefore denies the same. To the extent any further response is
4 necessary, these allegations are denied.

5 46. At this time, the Defendant states that its assets were foreclosed via Article IX of
6 the Uniform Commercial Code and it effectively stopped functioning. Its long-time management
7 was terminated. The Defendant now has little, if any assets, and conducts no business. The
8 Defendant is now in the control of a third-party restructuring officer. Because of these
9 circumstances, the Defendant cannot confirm or deny the allegations regarding the Plaintiff's
10 employment or tenure and therefore denies the same. To the extent any further response is
11 necessary, these allegations are denied.
12

13 47. The cited sections of the Seattle Municipal Code speak for themselves. To the
14 extent any response is necessary, these allegations are denied.

15 48. Because these allegations call for a legal conclusion, no response is necessary.
16 To the extent any response is necessary, these allegations are denied.
17

18 49. Because these allegations call for a legal conclusion, no response is necessary.
19 To the extent any response is necessary, these allegations are denied.

20 50. Because these allegations call for a legal conclusion, no response is necessary.
21 To the extent any response is necessary, these allegations are denied.

22 **AFFIRMATIVE DEFENSES**

23 A1. The allegations of the Complaint fail to state facts sufficient to constitute a cause
24 of action and/or causes of action on which relief may be granted.
25
26

1 A2. The Plaintiff's claims are barred by equitable doctrines, including, without
2 limitation, unclean hands, laches, estoppel, and/or waiver.

3 A3. The Plaintiff's claims are barred by the applicable statute of limitations and
4 repose.

5 A4. Any recovery by Plaintiff must be set-off or reduced by any amount recovered by
6 any other party whose acts caused or contributed to Plaintiff's damages, if any.

7 A5. The claims are barred by payment and/or release.

8 A6. The injuries and/or damages alleged in this lawsuit, which are hereby denied,
9 were due to and caused by the failure to mitigate.

10 A7. To the extent supported by facts revealed in discovery, Plaintiff's claims are
11 barred by the failure to join as a party to this action a party or parties in whose absence complete
12 relief cannot be accorded among those already parties, thereby subjecting the Defendant to a
13 substantial risk of incurring double, multiple or otherwise inconsistent obligations.

14 A8. Convoy reserves and does not waive the right to raise claims of any type against
15 any party and/or third parties.

16 A9. No act, omission, or combination of acts or omissions on the part of this
17 Defendant caused any injuries or damages to Plaintiff.

18 A10. Convoy reserves the right to amend this Answer and its affirmative defenses after
19 investigation, discovery and further information is disclosed, including any and all defenses
20 supported by the evidence proffered at trial of this matter, and Convoy is not waiving any
21 defenses that may arise during investigation, discovery, and trial of this litigation.
22
23
24
25
26

1 A11. Plaintiff's claims under the WARN Act cannot be sustained because any layoffs
2 or terminations of Convoy's employees were caused by business circumstances that were not
3 reasonably foreseeable as of the time that notice would have been required.

4 A12. Plaintiff's claims under the WARN Act cannot be sustained because any layoffs
5 or terminations of Convoy's employees occurred after a period in which it was actively seeking
6 capital and business opportunities which, if obtained, would have enabled Convoy to avoid or
7 postpone those actions and Convoy reasonably and in good faith believed that giving the notice
8 required would have precluded the employer from obtaining the needed capital or business.
9

10 A13. Plaintiff's claims under the WARN Act cannot be sustained because any layoffs
11 or terminations of Convoy's employees occurred due to damage caused by the COVID-19
12 Pandemic which was classed as a "national emergency" and "natural disaster" by state and
13 federal governments.

14 A14. Plaintiff's claims under the WARN Act cannot be sustained because, at the time
15 of the events in question, the Defendant was no longer operating as a going concern, but was
16 rather operating for the sole purpose of liquidating.
17

18 A15. This matter is inappropriate for treatment as a class action regarding the putative
19 Expense Class because individual issues predominate, including but not limited to:

20 a) whether any reimbursement was "necessary" within the meaning of
21 Seattle Municipal Code 14.20.010;

22 b) whether any affected employee reported the expenses and sought
23 reimbursement through Convoy's internal processes;
24
25
26

1 c) whether and how each individual employee's recovery may be impacted
2 by a set-off related to their personal use and enjoyment of the property and services he
3 or she was alleged to have paid for on behalf of Convoy;

4 d) whether some employees were, in fact, reimbursed for any expenses
5 incurred;

6 e) whether any property purchased as a "direct consequence" of an
7 employee's work was ever returned or surrendered once his or her employment with
8 Convoy ended;

9 f) whether any expenses were, in fact, a "direct consequence" of any shift to
10 remote work during the COVID-19 Pandemic; and

11 g) whether each individual employee is covered by SMC 14.20 based upon
12 his or her remote work location under SMC 14.20.015 and, if employees living and
13 working outside Seattle may be covered, which two-week periods are actionable.
14

15 A16. Both the putative WARN Class and Expense Class fail to meet the requirements
16 under Federal Rule of Civil Procedure 23.

17 A17. Supplementary jurisdiction over the putative Expense Class is inappropriate
18 because the statute subverts the Court's authority to determine whether two employees are
19 "similarly situated" for the purposes of class certification. SMC 14.20.090(D).
20

21 A18. Plaintiff's claim under the WARN Act should not be sustained in this Court
22 because a lawsuit bearing identical class-action allegations is currently pending in the U.S.
23 District Court for the District of Delaware — Convoy's state of incorporation — and was filed
24 before Plaintiff's Complaint was filed in this Court.
25
26

1 WHEREFORE, Defendant Convoy, Inc., having fully responded, demands to be
2 dismissed from this action with costs cast against the Plaintiff.

3 **JURY DEMAND**

4 Defendant demands a trial by jury on all claims so triable as a matter of right.
5

6 **DATED** this 4th day of January, 2024.

7 **BADGLEY MULLINS TURNER PLLC**

8 /s/Duncan C. Turner

9 Duncan C. Turner, WSBA #20597

10 19929 Ballinger Way NE, #200,

11 Seattle, WA 98155

12 Telephone: (206) 621-6566

13 Email: dturner@badgleymullins.com

14 *Liaison Counsel for Defendant Convoy, Inc.*

15 **BILLION LAW**

16 Mark M. Billion (*Pro Hac Vice forthcoming*)

17 922 New Road

18 Wilmington, DE 19805

19 T: (302) 428-9400

20 E: markbillion@billionlaw.com

21 *Attorneys for Defendant Convoy, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/Yonten Dorjee
Yonten Dorjee, Paralegal
BADGLEY MULLINS TURNER PLLC
Email: ydorjee@badgleymullins.com